



Federal Transit Administration

[Docket No. FTA–2021-0014]

Title VI Implementation

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Request for information on Title VI implementation.

SUMMARY: The Federal Transit Administration (FTA) is considering amending Circular 4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients (Title VI Circular) to incorporate lessons learned since its issuance on October 1, 2012. The Title VI Circular provides guidance and instructions to FTA recipients of Federal financial assistance on how to comply with requirements under Title VI of the Civil Rights Act of 1964 and the DOT Title VI regulations at 49 CFR part 21, which prohibit discrimination based on race, color, or national origin in federally funded programs. The agency is seeking suggestions from all transit stakeholders—including transit agencies, transit riders and community members, planning officials, States, cities, and the private sector—on enhancements that could be made to the Title VI Circular to provide clarity, to ensure Title VI requirements are met, and to advance equity. Specifically, FTA seeks input on requirements related to public participation, service and fare equity, facility equity analyses, implementation of rider conduct policies, and additional technical resources for determining and documenting disparate impact.

DATES: Comments should be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. FTA will consider comments filed after this date to the extent practicable.

ADDRESSES: You may file comments identified by docket number FTA-2021-0014 by any of the following methods:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Operations, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: (202) 493–2251.

All submissions received must include the agency name and docket number FTA-2021-0014. All comments received will be posted without change to *www.regulations.gov*, including any personal information provided. You may review the U.S. Department of Transportation’s (DOT) complete Privacy Act Statement in the *Federal Register* published on April 11, 2000 (65 FR 19477).

For access to the docket to read background documents or comments received, go to *www.regulations.gov* at any time and search for docket number FTA-2021-0014.

FOR FURTHER INFORMATION CONTACT: For program questions, Richie Nguyen, Office of Civil Rights, (202) 366-2689 or richie.nguyen@dot.gov. For legal

questions, Bonnie Graves, Office of Chief Counsel, (202) 366-0944 or

bonnie.graves@dot.gov.

SUPPLEMENTARY INFORMATION:

Background: FTA Title VI Circular provides guidance to FTA recipients of Federal financial assistance on how to comply with requirements under Title VI and the DOT Title VI regulations, which prohibit discrimination based on race, color, or national origin in federally funded programs. The Title VI Circular provides specific compliance information for each type of recipient: transit providers, States, and metropolitan planning organizations. The Title VI Circular also provides several appendices, including additional guidance and examples to help ensure recipients fulfill the requirements. The Title VI Circular was last updated in 2012.

Under the Title VI Circular, direct and primary recipients submit a Title VI Program demonstrating how the recipient is complying with Title VI requirements to FTA once every three years or as otherwise directed by FTA. FTA reviews Title VI Programs and their implementation through various oversight activities, including complaint investigations, Title VI Program Reviews, Specialized Title VI Compliance Reviews, and as part of Triennial Reviews and State Management Reviews. For more information on the existing Title VI Circular, please see <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/title-vi-requirements-and-guidelines-federal-transit>.

Through this request for information (RFI), FTA seeks input to inform the development of changes to the existing Title VI Circular. The timing for publication of an update to the Title VI Circular is not certain. FTA poses 13 questions below and looks forward to feedback from all interested parties.

The Title VI Circular contains binding obligations, which 49 U.S.C. 5334(k) defines as “a substantive policy statement, rule, or guidance document issued by the Federal Transit Administration that grants rights, imposes obligations, produces significant effects on private interests, or effects a significant change in existing policy.” Under 49 U.S.C. 5334(k), FTA may issue binding obligations if it follows notice and comment rulemaking procedures under 5 U.S.C. 553. Accordingly, prior to making any amendments that would create a new binding obligation or modify an existing one, FTA will follow such notice and comment rulemaking procedures.

Public Participation

1. The Title VI Circular currently requires recipients to submit and implement a public participation plan that includes an outreach plan to engage minority and limited English proficient (LEP) populations, as well as a summary of outreach efforts made since the last Title VI Program submission. In June 2021, U.S. DOT issued a revised Title VI Order Number DOT 1000.12C [on the U.S. DOT Title VI Program \(Order\)](#), which provides policy direction, practices, and standards to U.S. DOT Operating Administrations, including FTA, for establishing and maintaining an enforcement program that ensures Title VI compliance. The Order requires FTA to develop comprehensive community participation requirements (Community Participation Plan) that applicants and recipients must satisfy as a condition of receiving an award of Federal financial assistance. The goal of the Community Participation Plan is to “facilitate full compliance with Title VI by requiring meaningful public participation and engagement to ensure that applicants and recipients are adequately informed about how programs or activities will potentially impact affected communities, and to ensure that diverse views are heard and considered throughout all stages of the consultation, planning, and decision-making process.” The Order provides 10 effective practices that ensure

proactive public engagement: establishment of goals and objectives, identification of affected communities, focused outreach, meaningful education, diverse communications, comprehensive engagement, meaningful participation, accessibility, reported outcomes, and recordkeeping. Which practices outlined in the Order should FTA incorporate in its guidance on promoting inclusive public participation? Are there additional effective practices FTA should consider?

2. What effective public participation practices are transit agencies currently using? How is meaningful access to public participation activities provided to traditionally underserved communities? How is effectiveness defined and measured?

Service and Fare Equity Analyses

3. The Title VI Circular currently requires transit providers that operate 50 or more fixed route vehicles in peak service and are located in an Urbanized Area (UZA) of 200,000 or more in population to prepare and submit service and fare equity (SAFE) analyses as described in Chapter IV. These SAFE analyses are conducted prior to implementing service or fare changes, but they are submitted to FTA as part of a recipient's Title VI program once every three years. Due to this gap in time, FTA may not become aware of major service changes or fare changes and the related equity analyses until years after the changes have been made and the analyses conducted. Should FTA require a SAFE analysis be posted on a recipient's website or submitted to FTA prior to the service or fare change being enacted, in addition to submission with the recipient's Title VI program? If so, how soon after an analysis is conducted or before a change is approved or implemented should FTA require posting or submission?

4. For major service change, disparate impact, and disproportionate burden thresholds, the Title VI Circular does not set values or limits. Regarding major service change thresholds, the Circular states, "The threshold for analysis shall not be set so high so as to

never require an analysis; rather, agencies shall select a threshold most likely to yield a meaningful result in light of the transit provider's system characteristics." Should FTA set a value or limit on major service change, disparate impact, or disproportionate burden thresholds? If so, what should that value or limit be—or what factors should be evaluated?

5. The Title VI Circular explains existing public participation requirements for development of major service change policies, disparate impact policies, and disproportionate burden policies. Should FTA address public participation where a transit provider finds a potential disparate impact or disproportionate burden, specifically with regard to analysis of modifications to avoid, minimize, or mitigate potential disparate impacts?

6. The Title VI Circular provides two data analysis options for conducting a service equity analysis: using population data or using ridership data. Should FTA provide additional options for conducting a service or fare equity analysis? If so, what alternatives should FTA consider?

7. The Title VI Circular provides that service equity is measured based on access to public transit service. Is this measure sufficient to ensure equity, or should it be measured by destinations, such as how many jobs riders can access from a particular stop within a specified time, or how long it takes to get to grocery stores, medical facilities, and other critical destinations, or by some other measure?

8. The Title VI Circular provides that temporary service changes (12 months or less) and temporary fare reductions (6 months or less) do not respectively require service and fare equity analyses. Should FTA reconsider these timeframes? Should FTA require some analysis during temporary changes to consider the equity impacts of the temporary changes?

Facility Equity Analyses

9. The Title VI Circular, with regard to the determination of site or location of facilities, requires a Title VI facility equity analysis, in which a recipient must analyze the proposed location of certain facilities to ensure there is no disparate impact in the siting decision.

FTA provides limited guidance in the Circular on this topic but does require a comparison of equity impacts of various siting alternatives and an analysis before the selection of the preferred site. Should FTA provide additional guidance on facility equity analyses, including public participation, disparate impact thresholds, cumulative effects, or timeframes? Would stakeholders find it helpful if FTA published a sample facility equity analysis, similar to the sample SAFE analyses, in the Appendix to the Circular?

10. These facility equity analyses are conducted prior to site selection, but they are submitted to FTA as part of a recipient's Title VI program once every three years. Due to this gap in time, FTA may not become aware of facility siting and related equity analyses until years after they have been constructed or conducted. Should FTA require a facility equity analysis be posted on a recipient's website or submitted to FTA prior to site selection, in addition to submission with the recipient's Title VI program? If so, how soon after an analysis is conducted or before a change is approved or implemented should FTA require posting or submission?

Implementation of Rider Conduct Policies

11. The Title VI Circular currently makes no mention of equitable implementation of rider conduct policies, such as prohibitions on smoking, littering, loitering, eating on vehicles, evading fares, or playing music loudly. Given the potential for disparate impacts on the basis of race, color, or national origin in the implementation of these policies, which is prohibited by DOT Title VI regulations, FTA is considering how to address

these topics. To ensure compliance with Title VI, how should FTA address the equitable implementation of rider conduct policies?

Technical Resources for Analyzing Disparate Impact

12. FTA Regional Civil Rights Officers and Headquarters staff field many technical assistance requests from transit providers asking how to determine disparate impact and how to evaluate service and fare changes for equity. These include transit providers who do not yet meet the Chapter IV thresholds that require SAFE analyses or demographic data collection and reporting. What commendable practices are transit providers, and in particular smaller providers not subject to the Chapter IV requirements, using to review their policies and practices to ensure their service and fare changes do not result in disparate impacts on the basis of race, color, or national origin?

Additional Title VI Circular Feedback

13. Should FTA consider incorporating guidance and instructions into the Title VI Circular on topics or policy matters not discussed in the questions above or not currently covered in the Circular? If so, what are those topics or policy matters? What commendable practices should FTA consider including? FTA welcomes any additional feedback on the Title VI Circular, including topics not listed in the questions above.

All interested parties are encouraged to respond to this RFI. Submissions are strictly voluntary. Individuals or entities responding to this RFI should state their role as well as knowledge of and experience with Title VI and the Title VI Circular. FTA may request additional clarifying information from any or all respondents. If a respondent does not wish to be contacted by FTA for additional information, a statement to that effect should be included in the response. All information submitted should be unclassified and should not contain proprietary information.

FTA is not obligated to officially respond to the information received, but the responses will assist FTA in developing proposed Title VI Circular changes.

Comments may be submitted and viewed at Docket No. FTA-2021-0014 at <https://www.regulations.gov>.

Nuria I. Fernandez,

Administrator.

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